IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. Nos. 3672, 3673, 3674, 3675 & 3676 OF 2004

Date: 08.08.2005

BETWEEN:

Hotel Sarojinidevi, rep. By its Proprietor

J. Lakshman Rao

…. PETITIONER

Vs.

1. Sri Satya Sai Cooperative Urban Bank Limited, rep. by

its Officer on Special Duty, Near Mahankali Temple,

Secunderabad and another.

…. RESPONDENTS

COMMON ORDER:

In all these matters the petitioners suffered recovery certificates under Section 71 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act') issued by the second respondent. They assailed those certificates before the A.P. Cooperative Tribunal constituted under Section 75 of the Act and moved applications for stay of execution of certificates. The learned Tribunal while passing orders in favour of the petitioners, as required under Rule 11 of the A.P. Cooperative Tribunal (procedure) Rules, 1994 (for short 'Procedural Rules') passed conditional orders directing the petitioners to pay half of the certificate amount. These orders are assailed in this writ petition. Subsequently, it appears, as the petitioners did not comply with the conditions imposed, the stay applications were dismissed.

Learned counsel for the petitioners Sri P.R. Prasad placed strong reliance on the judgment of this Court in ***M. Babu Rao v. Deputy Registrar of Cooperative Societies*** in support of his contention that when the second respondent issued certificate of recovery without jurisdiction as held by the Full Bench, the Tribunal cannot now be further allowed to adjudicate the appeal as the impugned certificate before the Tribunal is a void. Therefore, he would urge that the petitioners may be granted time to amend the prayer appropriately in the writ petitions.

When these writ petitions were filed, the core question was whether the A.P. Cooperative Tribunal committed any error in imposing the condition for payment of part of the amount directed to be paid to the second respondent. The position does not in any manner change even after the decision of the Full Bench in M. Babu Rao's case (supra). Further, the ground that the order passed by the second respondent is void was never raised in the writ petitions, nor the petitions were concerned at that time. Even if the petitioners are allowed to amend the writ petition prayers, it is well settled that they cannot be permitted to pursue two remedies simultaneously. Instead of that it would be in the interest of justice that liberty is given to the petitioners to move A.P. Cooperative Tribunal, Hyderabad for appropriate orders in view of the law declared by the Full Bench in M. Babu Rao's case (supra).

Insofar as these cases are concerned, the question raised is squarely covered by the judgment in ***K. Sambasiva Rao v. Sai Cooperative Urban Bank*** wherein this Court held that the power of the Tribunal to pass incidental orders is circumscribed by the Rules 11 and 12 of the Procedural Rules. Therefore, if a Tribunal while passing orders of stay or orders of suspension directs the appellant before it to deposit half of the amount awarded by the Registrar, the same cannot be said to be illegal. In this petitions no relief can be given to petitioners.

However, liberty is given to the petitioners to move A.P. Cooperative Tribunal, Hyderabad by placing reliance on M. Babu Rao's case (supra). As and when the petitioners move applications, the learned Tribunal is directed to pass appropriate orders immediately keeping in view the law declared by this Court that "any award or order passed, certificate issued or an order in execution proceedings, by the Registrar on any claim or application of a Cooperative Bank, is patently and inherently without jurisdiction, null, void and inoperative".

The Writ Petitions are accordingly dismissed. No costs.

V.V.S. RAO, J.

8th August, 2005

Js.